

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.1124 OF 2008

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the order passed by the District Collector (PTS), Chittoor – respondent No.1 herein, vide proceedings Roc.No.1609/2007A3(Pts), dated 02.01.2008.

2. Heard Sri P.Gangaiah Naidu, learned Senior Counsel, appearing for the learned counsel on record for the writ petitioner, learned Government Pleader for Panchayat Raj for the respondents 1 and 2 and Sri G.Seshadri, learned standing counsel for the 3rd respondent, apart from perusing the material available before the Court.

3. According to the petitioner, she got elected as Sarpanch of V. Kota Gram Panchayat, V.Kota Mandal, Chittoor District, in the elections held on 06.08.2007. In connection with the alleged irregularities pertaining to the auction held for leasing of the shop rooms of the 3rd respondent – Gram Panchayat, in the years 2006 and 2007, the District Collector – 1st respondent issued a show-cause notice bearing Roc.No.1609/2007B2(Pts), dated 06.09.2007, asking the petitioner to show-cause as to why an amount of Rs.1,08,120/- should not be recovered. According to the

petitioner, she submitted her detailed explanation on 19.09.2007, denying the allegations made in the said show-cause notice. The 1st respondent – District Collector, passed an order vide proceedings Roc.No.1609/2007A3(Pts), dated 02.01.2008, instructing the petitioner to remit an amount of Rs.1,08,120/- i.e., 25% of the total loss said to have been sustained by the Gram Panchayat. Challenging the validity and legal sustainability of the said order passed by the District Collector-1st respondent, the present writ petition came to be filed.

4. This Court, while ordering '*Rule Nisi*' on 25.01.2008, in W.P.M.P.No.1351 of 2008, granted interim direction directing the 1st respondent – District Collector, not to collect the said amount covered by the impugned proceedings dated 02.01.2008.

5. The learned Senior Counsel appearing for the writ petitioner would contend that the order under challenge is highly arbitrary, illegal and violative of Article 14 of the Constitution of India. It is further submitted by the learned Senior Counsel that the question of fastening liability to the petitioner does not arise, as the petitioner got elected in the election held on 06.08.2007 and for the events which took place prior to the said date, the petitioner herein cannot faulted nor can be made liable.

6. On the contrary, it contended by learned Government Pleader for the respondents 1 and 2 and learned standing counsel for the 3rd respondent that there is no illegality nor there exists any procedural infirmity in the impugned action and the 1st respondent herein passed the order under challenge strictly in accordance with law and by giving complete opportunity to the petitioner herein. It is further submitted that in the absence of any illegality, the present writ petition is not maintainable under Article 226 of the Constitution of India.

7. It is the categoric case of the petitioner herein in the affidavit filed in support of the writ petition that she got elected as Sarpanch of the 3rd respondent Gram Panchayat in the elections held on 06.08.2007. There is absolutely no dispute on the issue that initially the Gram Panchayat passed a resolution No.63, dated 30.01.2006, resolving to lease out the seven shop rooms for the period commencing from 01.04.2006 to 31.03.2009 i.e., 3 years. There is also no controversy on the reality that vide resolution No.100, dated 07.03.2007, the Gram Panchayat, resolved to cancel the earlier leases and to hold auction for a period of 3 years. It is also evident from the material available before the Court that consequent upon the said resolution passed by the Gram Panchayat on 07.03.2007, the respondent- Gram Panchayat,

conducted auction on 28.03.2007 and the same was approved vide resolution No.121, dated 31.03.2007.

8. As noted above, the petitioner herein got elected as Sarpanch of the 3rd respondent – Gram Panchayat, only on 06.08.2007. Therefore, as correctly pointed out by the learned Senior Counsel, for the irregularities, if any, occurred prior to the date of election of the petitioner, the petitioner herein cannot be made liable. The 1st respondent herein evidently lost sight of the said crucial aspect, while fixing the liability on the petitioner herein. Therefore, the impugned auction, which culminated in the order dated 02.01.2008, passed by the 1st respondent is highly preposterous and cannot be sustained in the eye of law. By any stretch of imagination, the petitioner herein cannot be made liable for the irregularities, if any, took place prior to assumption of charge by the petitioner herein as Sarpanch of the 3rd respondent – Gram Panchayat.

9. In the facts and circumstances of the case, this Court finds no justification on the part of the respondent authorities in fastening liability with the petitioner herein and this Court has absolutely no hesitation to hold that the impugned order dated 02.01.2008 cannot be sustained in the eye of law.

10. For the aforesaid reasons, writ petition is allowed, setting aside the order passed by the District Collector -

1st respondent, vide proceedings Roc.No.1609/2007A3(Pts), dated 02.01.2008, only to the extent of the petitioner herein.

11. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

22.12.2016
SS

